

FCC MAIL SECTION

Federal Communications Commission

DA 99-450

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DISPATCHED BY **Before the**
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
 Amendment of Section 73.202(b),) MM Docket No. 98-53
 Table of Allotments,) RM-9253
 FM Broadcast Stations.)
 (Malvern and Bryant, Arkansas))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 24, 1999

Released: March 5, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of Proposed Rule Making, 13 FCC Rcd 8426 (1998), issued in response to a petition for rule making filed on behalf of Malvern Entertainment Corporation ("petitioner"), licensee of Station KBOK-FM, Channel 227A, Malvern, Arkansas, proposing the reallocation of Channel 227A to Bryant, Arkansas, and modification of the license for Station KBOK-FM, as requested. Petitioner filed supporting comments in response to the Notice. No other comments were received.

2. Petitioner's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). The requested reallocation of Channel 227A to Bryant (population 5,269)¹ is mutually exclusive with its existing allotment at Malvern² (population 9,256).

3. In support of the proposal, petitioner advises that from its current site, Station KBOK-FM operates with an antenna height of only 23.6 meters HAAT, whereas from the proposed reference site it believes it could achieve a full 100 meter HAAT. According to petitioner, the reallocation will enable Station KBOK-FM to increase the population it serves within its 60 dBu service contour from 23,552 to 114,572 people, representing an increase in population of 91,020, and will increase the coverage area from 910.6 sq. km. to 2,512.3 sq. km., representing an additional 1,601.7 sq. km. While an area comprising 432.4 sq. km. will remain unchanged

¹Population figures recited herein were taken from the 1990 U.S. Census.

²The distance between Malvern and the petitioner's proposed site at Bryant is 30.2 kilometers (19 miles), whereas a minimum distance separation of 115 kilometers (71 miles) is required in this instance.

as a result of the requested reallocation, the remaining 478.2 sq. km. losing primary service from Station KBOK-FM will continue to receive reception service from seventeen other stations. Therefore, petitioner avers that the proposed reallocation will not create any underserved area.³

4. As 926 residents (17.6%) of Bryant's populace of 5,269 reside within the Little Rock-North Little Rock Urbanized Area, and the reallocation would result in the provision of a 70 dBu signal to less than 1% of the urbanized area,⁴ the *Notice* requested additional information to determine whether Bryant merits a first local service preference, consistent with the criteria established in *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951). Therefore, petitioner was requested to provide additional information sufficient to demonstrate that Bryant merits a first local service preference, using the factors enumerated in *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988).⁵

5. Petitioner responds that although a small percentage of Bryant's residents live within the urbanized area, 82.4% of its residents are located outside thereof. Additionally, as Station KBOK-FM would provide 70 dBu service to less than 1% of the urbanized area, the signal population and coverage factor favors Bryant as an independent community.

6. As to the size and proximity of the two communities, petitioner reports that Bryant is located approximately 20 miles from Little Rock, with the communities of Alexander and Shannon Hills located between the two cities. Further, petitioner advises that Bryant is located

³Petitioner remarks that while the proposed gain area is also well-served, and no underserved area is involved, Station KBOK-FM will serve the public interest by providing a new service to in excess of 90,000 people.

⁴As stated in the *Notice*, while the boundaries of most of the community are outside of the Little Rock-North Little Rock Urbanized Area, Bryant's partial inclusion therein distinguishes this proposal from the policy announced in *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (proponents seeking to relocate to a community adjacent to an urbanized area that would place a 70 dBu signal over 50% or more of the urbanized area must submit a *Tuck* analysis (emphasis supplied).

⁵Three criteria considered in making a first local service preference determination are: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city. There are eight factors the Commission deems relevant to the interdependence determination, as follows: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.

in Saline County whereas Little Rock is in Pulaski County. While Little Rock's population (175,795) exceeds greatly that of Bryant, petitioner asserts that the significance of the difference is lessened given the distance between the two communities.

7. As to the degree of interdependence of Bryant with the Little Rock metropolitan area, petitioner responds that according to information supplied by the mayor of Bryant, only 45% of its residents who are employed work in the Little Rock metropolitan area, leaving 55% of its employed residents working elsewhere. Further, petitioner advises that while Bryant has its own weekly newspaper, it has no other local media to provide a daily source of news and information. Petitioner also provided letters from community leaders lending their support of Bryant obtaining its own radio facility, and distinguishing that Bryant's local needs are clearly distinct from those of Little Rock. Further, petitioner advises that Bryant has its own local government which includes a mayor, city council, city clerk, and approximately 65 city employees. Moreover, Bryant has its own wastewater plant, as well as its own street, fire, police and parks departments. Southwestern Bell publishes a telephone book which incorporates Bryant and other surrounding, smaller communities. Petitioner advises that Little Rock has its own separate directory listings and that it is a toll call from Little Rock to Bryant. Additionally, Bryant has its own post office and zip code (72022). Further, petitioner advises that additional businesses have started in Bryant since it initiated its reallocation request. And, although Bryant has no public transportation, petitioner reports that is not unusual for a community of its size. As Bryant has only a weekly newspaper available to merchants for local advertisements, petitioner advises that those who desire to purchase radio time must resort to an area daytime AM station in Benton, Arkansas, or seek to advertise on a Little Rock station, the latter of which petitioner states is not practical or cost effective when trying to reach local customers. Petitioner avers that the expanding Bryant business community needs its own local radio facility. According to petitioner, Bryant does not rely on Little Rock for municipal services. In this regard, petitioner states that as described in the *Notice*, Bryant has its own schools, police and fire protection as well as a branch of the Saline County Library that is separate from the Little Rock library system. Moreover, petitioner reports that a new library is planned at Bryant.

8. As a further indicator of its independence, petitioner remarks that Bryant does not share representatives in the Arkansas legislature with Little Rock. The same is true of the Arkansas State Senate as Bryant lies in District 14 while Little Rock includes Districts 16-17. Moreover, petitioner reports that Bryant has a different State Prosecuting Attorney and Circuit Court from Little Rock.

9. Petitioner concludes that based on the information presented, Bryant is not an appendage of Little Rock but is a separate and independent thriving community, that has its own needs and interests which may be addressed by having a local aural transmission service allotted to the community.

10. As stated in the *Notice*, although the proposed reallocation of Channel 227A to Bryant would result in the provision of a 70 dBu signal to less than 1% of the Little Rock-

North Little Rock Urbanized Area, our primary concern was premised not on the projected coverage. Rather, we expressed our concern that given Bryant's partial location therein, whether it should deserve a first local service preference or be credited with all of the aural transmission services licensed to the urbanized area. Based upon the extensive information presented, we believe that pursuant to its evaluation with the criteria enumerated in Tuck, *supra*, Bryant is a separate independent community and should be considered distinct from the Little Rock-North Little Rock Urbanized Area. We base this position upon the fact that Bryant is located approximately 20 miles from Little Rock and is located in a separate county. Most importantly, our analysis of the petitioner's Tuck showing reveals the presence of at least six of the eight factors used by the Commission in Tuck cases to show independence. Specifically, as outlined above, the petitioner has shown that most of the residents of Bryant do not work in the Little Rock metropolitan area, that there is a local newspaper, and that community leaders perceive Bryant to have needs separate from those of the Little Rock Urbanized Area. In addition, the petitioner has shown that Bryant has its own local government and elected officials, provides its own municipal services and does not rely upon the services from Little Rock (except for the purchase of water), and is in a separate telephone book with several small communities. Of the two remaining factors, one is partially present -- that is, while there is no public transportation system in Bryant, the community does have numerous commercial establishments and some health facilities. With respect to the last factor -- the extent to which the specified community and the central city are part of the same advertising market, there is insufficient information to make a determination. The community of Bryant does have a weekly newspaper, which is a source for local advertising, but, of necessity, local advertisers must use radio stations from other communities in order to reach local residents. Nevertheless, based upon the presence of most of the above referenced facts, we will not attribute the Little Rock-North Little Rock stations to Bryant.

11. Next, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. *See Change of Community MO&O, supra*. Applying those procedures, we compare the existing arrangement of allotments with the proposal using the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992).⁶ In making our comparison, the first two priorities are not applicable in this instance. No white or gray areas are involved (priorities (1) and (2)). Rather, as Bryant would receive its first local aural transmission service (priority (3)), it is favored over the retention of the allotment at Malvern (priority (4)). Additionally, the reallocation will afford the petitioner an opportunity to expand its service area. Moreover, the reallocation will not remove the sole local transmission service from Malvern as Station KISI(FM), Channel 268A and Station KBOB-AM remain in the community. Our engineering analysis also reveals that the reallocation to Bryant will result in a gain area of 1,626.1 km (628.1 sq. mi.) containing a population of 118,479 people. While the reallocation would also result in loss of service to an area of 1,624.7 sq. km. (627.6 sq. mi.)

⁶The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

containing a population of 62,127 people, the loss area will continue to receive more than five full-time reception services, and therefore is considered to be well served. Based upon the foregoing, we believe that the public interest would benefit by reallocating Channel 227A from Malvern to Bryant, as requested. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station KBOK-FM to specify operation on Channel 227A at Bryant, Arkansas, in lieu of Malvern, Arkansas.

12. As stated in the Notice, Channel 227A can be allotted to Bryant, Arkansas, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules utilizing the petitioner's proposed site located 11 kilometers (6.8 miles) southwest of the community at coordinates 34-30-30 NL and 92-32-42 WL.

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 19, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Bryant, Arkansas	227A
Malvern, Arkansas	268A

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Malvern Entertainment Corporation for Station KBOK-FM (File No. BLH-890522KE), IS MODIFIED to specify operation on Channel 227A at Bryant, Arkansas, in lieu of Malvern, Arkansas, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KBOK-FM's license, except the channel, as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the license issued for Station KZFO(FM), except for the channel as specified above, and a license application (FCC Form 302) is filed within ten (10) days of commencement of program tests.

15. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Malvern Entertainment Corporation, licensee of Station KBOK-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license at Bryant.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau